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The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte: PHILLIP J. LUCAS and LEO W. MAYER

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Application No. 09/809,678

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COMMUNICATION

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This application was returned to the Board of Patent Appeals and Interferences on March 30, 2006.

**BACKGROUND**

On September 29, 2005, the Board of Patent Appeals and Interferences (hereinafter the BPAI) mailed an Order Returning Undocketed Appeal, advising the Examiner that the Examiner's Answer mailed June 10, 2003, was not signed by all of the required appeal

Application No. 09/809,678

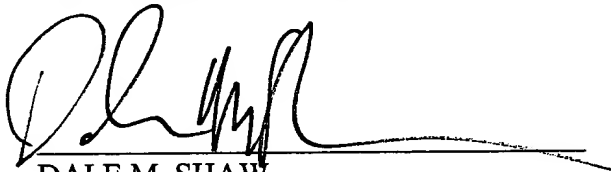
conference participants. Further, the Order Returning Undocketed Appeal requested that the Artifact, identified as 09809678CA be located and forwarded to the Board of Patent Appeals and Interferences.

On March 30, 2006, the BPAI received an Examiner's Answer with the required appeal conferee signatures (original signatures) and the requested Artifact. However, there is no indication on the record that a copy of the signed Examiner's Answer was mailed to the appellant or that a copy was forwarded to IFW for scanning.

#### CONCLUSION

Attached with this Communication is a copy of the signed Examiner's Answer.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

A handwritten signature in black ink, appearing to read 'D. Shaw', with a long horizontal line extending to the right.

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Application No. 09/809,678

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 11

Application Number: 09/809,678  
Filing Date: March 14, 2001  
Appellant(s): LUCAS ET AL.

Nellie C. Kaufman (34,689)  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 03-24-03.

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**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

Appellant's brief includes a statement that claims 1-7, claims 8-12, and claim 13 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

**(8) *Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

3,788,462	MEINCER	01-1974
3,730,417	LAWSON	05-1973

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Meincer in view of Lawson. The patent to Meincer teaches structure substantially as claimed including a base (10), support structure comprising a flexible film wrapped around one of the multiple layers around a first and a second axis, the first and second axis being perpendicular to each, the axis in the same plane, in as much as the instant

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invention's, the only difference being that the base is not adhered to the film. However, the patent to Lawson teaches the use of base members (60) adhesively attached to a package system to provide a unitary structure. It would have been obvious and well within the level of one having ordinary skill in the art to modify the structure of Meincer to include an adhesively mounted base structure, as taught by Lawson since such structure is used in the same intended purpose of providing a unitary package structure, thereby providing structure as claimed. The use of particular materials, such as plastics, foam etc are conventional materials used in the formation of pallets as evidenced by the cited references, such as the patent to Warrick(3,942,654). To use such materials would have been obvious and well within the level of ordinary skill in the art. Further, note the percentage of coverage is a matter of desirability and would have been obvious and well within the level of ordinary skill in the art. The method of producing the pallet would have been obvious in view of the structures. It is noted that the base is disposable/recyclable as claimed.

**(11) Response to Argument**

In response to appellant's remark regarding the references teaching away from claim 1 since "it requires the use of a conventional pallet or the lowermost layers of the load as a "base"", note the following. The claims only requires a disposable base adhered to the flexible from which is adapted to receive the forks of a forklift. The patent to Meincer teaches the limitation as stated above at 10.

In response to appellant's remarks that neither base in Meincer is disposable/recyclable, note the following. All structures are disposable and recyclable.

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There is nothing present in the claim that would prevent the structure of Meincer from being disposable/recyclable as stated.

In response to appellant's remarks that the spacers of Lawson are not adhered to either the inner container (46) or to a load inside the inner container(46) and therefore do not act as a "base" for any load or product inside the inner container (46), note the following. The patent to Lawson at column 5, lines 9-33 state among other things, "The inner container 46 has formed along their bottom thereof a plurality of flaps 54 and a plurality of bottom flaps 56 which are hingedly attached to the sides 48 and 50 by means of score lines 58....The spacers 60 are fixedly attached by means of glue or some other suitable fastening means to the bottom flaps 54 and 56." The spacers 60 are attached to the inner container. Further, the teaching of Lawson shows the use of an adhesive applied to a base so that it can be attached to a load to provide a unitized structure.

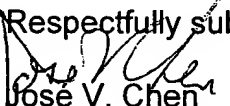
It again is noted that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. In the instant case, the patent to Meincer teaches the structure as claimed including base and supporting structure, the difference being that the base is not adhesively adhered to the support structure, which includes the wrap. However, the patent to Lawson teaches a base structure that includes adhesive to provide a unitary structure between a base and a support



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structure. One of ordinary skill in the art with respect to the patent to Meincer would have looked to the teachings of Lawson to include a means (adhesion) to provide a unitary structure to aid in movement of a loaded unit. It is noted that any structure is disposable and wood, paper, plastics are materials that are readily recyclable.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,  
  
Jose V. Chen  
Primary Examiner  
Art Unit 3637

Chen/jvc  
March 27, 2006

Conferees  
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